IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.23 OF 2000
AND
W.M.P.NO.28 OF 2000
AND
CONTEMPT PETITION NO.285 OF 2003
SUB APPLN.NO.157 OF 2003

W.P.No.23 of 2000

Tmt.S. Rajeswari .. Petitioner

-Vs-

Mannargudi Municipality,
Rep. by its Commissioner,
Mannargudi,
Tiruvarur District. .. Respondent

Cont.Petn.No.285/2003

Tmt.S. Rajeswari .. Petitioner

Vs.

S. Kalaiselvan
Commissioner,
Mannargudi Municipality,
Mannargudi,
Tiruvarur District. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

Contempt Petition filed under Sections 10 and 12 of the Contempt of Court□s Act as stated therein.

For Petitioner : Mr.K. Sridhar

For Respondent : Mr.R. Sankaran

:O R D E R

At the time of hearing of the Contempt Petition, it was submitted by the counsel for both the parties that the connected Writ Petition No.23 of 2000 should also be considered so that the dispute between the parties can be resolved. Accordingly, the writ petition was listed along with the contempt petition.

2. Heard the learned counsels appearing for the parties.

3. The facts and circumstances giving rise to the writ petition as well as the contempt petition may be noticed.

Shop room bearing Door No.10, Natesan Street, Mannargudi belonging to Mannargudi Municipality, the respondent in the writ petition, had been leased out in favour of Mannargudi Co-operative Marketing Society with effect from 1.4.1989 on monthly rent of Rs.600/-. On expiry of 3 years, the lease was renewed for a further period of 3 years from 1.4.1992 to 31.3.1995 and rent was enhanced by 30% and fixed at Rs.78 0/-. The co-operative society, which was using the shop as a wine shop, was unable to run the shop after expiry of the license, and therefore, the shop remained unutilised for some period and thereafter the co-operative society sub-let the shop in favour of the petitioner. The Municipality subsequently took steps to evict the petitioner which gave rise to filing of O.S.No.436 of 1993. After taking possession, auction was held, wherein one M. Saroja was the highest bidder. Ultimately, W.P.Nos.3874 of 1994 and 15066 of 1996 were filed by the petitioner and M. Saroja respectively and Contempt Application No.253 of 1996 was filed by the petitioner. In the common judgment dated 12 .12.1996 the following directions were given :-

 . . . 1. The respondent/Municipality shall restore the possession of the subject shop to the petitioner in W.P.No.3874 of 1994 on and from 1.4.1997.

2. The petitioner in W.P.No.15066 of 1996 is directed to vacate and deliver the shop to the Municipality on or before 31.3.1997.

3. The rent for the shop from 1.4.1997 payable by the petitioner in W.P.No.3874 of 1994 shall be Rs.3,019/- per month, the rate fixed for the petitioner in W.P.NO.15066 of 1996.

4. It is open to the Municipality to recover the arrears of rent upto 31.3.1997 from the petitioner in W.P.No.15066 of 1996.

5. The terms and conditions of lease as and from 1.4.1997 shall be in accordance with the directions of the Supreme Court and the statutory rules of the Government...

The matter was further agitated before the Division Bench and even in the Supreme Court, but, ultimately the direction was confirmed and the petitioner remained in possession. Subsequently, however, the rent was enhanced to Rs.3472/-. The petitioner had filed representation dated 22.10.1999 requesting reconsideration of the rent wherein the petitioner

offered to pay the highest rent which was being paid in respect of other shops. However, the respondent sent a reply indicating its inability to reduce the rent and insisted on payment of Rs.347 2/- from 1.4.1999 till 31.12.1999. The order dated 16.12.1999 rejecting such representation has been challenged in the writ petition and prayer has been made to quash such order and to give direction for consideration of the representation in proper perspective.

4. In the writ petition there was an interim direction on 4.1.2000 staying the order subject to deposit of Rs.20,000/-. The period came to an end on 31.3.2000. Subsequently, there has been no further renewal. However, on 25.2.2003, the respondent in the contempt petition came to the shop, locked and sealed the same thereby dispossessing the petitioner. Contempt Petition No.285 of 2003 has been filed alleging violation of the order dated 4.1.2000 in WMP.No.28 of 2000 arising out of W.P.No.23 of 2000. Subsequently, when steps were taken by the Municipality to auction the shop, in Sub Appn.No.157 of 2003 an order was passed to the effect that the petitioner may participate in the auction without prejudice to the contentions raised in the writ petition and the auction shall not be confirmed in favour of any person without the leave of the court. In the said auction, even though the petitioner has participated, his offer was lower than the offer given by the highest bidder. However, considering the facts and circumstances of the case, on 30.4.2003 the following direction was given :-

 . . . In such view of the matter, the petitioner is directed to continue on payment of Rs.9,000/- per month with effect from 1.5.2003. The petitioner shall continue to pay every month until further orders. The amount payable for previous months would be fixed after considering various factors. . .

5. It is the contention of the petitioner that inspite of the subsequent order dated 30.4.2003, the shop room had remained under lock and key and possession was not delivered. Learned counsel appearing for the Municipality has submitted that the petitioner had been called upon to comply with certain required formalities such as deposit of security money and rent for a period of 12 months in advance and therefore, possession has not been delivered.

6. Parties have been called upon to produce further materials relating to rent and security deposit in respect of shops in the very same locality and a chart has been produced by the counsel for the petitioner indicating the rent and deposit payable in respect of other shops in the locality. Counsel for the Municipality had been asked to obtain instructions on the said aspect and in course of hearing to-day he has submitted that the facts and figures indicated in the chart filed by the counsel for the petitioner are correct.

7. In the aforesaid background of facts and past history, learned counsel for the petitioner has made the following submissions :-

a) Since the rent payable in respect of other shops in the very same area was much lower, there is no justification for the Municipality not to reduce the rent and at any rate, there is no justification to increase the rent from Rs.3019/- to Rs.3472/-.

b) Since an order has been passed permitting the petitioner to continue on deposit of Rs.20,000/-, which had been complied with, action of the petitioner in forcibly locking the shop with all the articles inside amounted to contempt of court□s order.

8. Learned counsel for the respondent has submitted that the amount of Rs.3019/- has been fixed by the court and thereafter enhancement was made at 15% as per the relevant rules and even though the rent payable in respect of adjacent shop was lower, there was no scope to reduce the rent in respect of the present shop as it was based on the court□s order. In respect of the contempt petition it has been submitted that since the petitioner had not paid the arrear amount and was occupying the shop even though there was no further renewal after 31 .3.2000, when the previous period of lease expired, possession was taken and there is no wilful violation of the order of the court.

9. Since the matter was pending before the High Court and the petitioner had been allowed to continue on payment of certain amount, it was improper on the part of the respondent to suddenly lock the shop room and seal the same without seeking any further clarification from the court. It is no doubt true that the earlier lease period has come to an end on 31.3.2000 and there had been no formal renewal by the Municipality, but the respondents were well aware of the pendency of the writ petition, where parties had already entered appearance, and without seeking clarification from the court , it was imprudent on their part to dispossess the petitioner unilaterally. However, since I propose to finalise the dispute relating to payment of rent and continuance of lease mainly on the basis of equitable consideration, I do not propose to proceed further in the contempt matter save and except in making the observation that the respondent should have been more careful in the matter.

10. As already indicated, a chart has been submitted before the Court by the counsel for the petitioner indicating the security deposit and the rent payable in respect of other shops in the locality. Compared to the rent payable, in the present case, it is obvious that the rent payable in those shops are much less. Learned counsel for the Municipality has however submitted that in the present case the rent had been fixed on the basis of the order passed by the High Court on earlier occasion in W.P.Nos.3874/94 and 1506 6/96 and in respect of other shops the rent had been fixed initially which was being increased by 15% and therefore, there is a disparity in the rent payable in respect of other shops. It has been further indicated that taking into the account the highest bid given by M. Saroja, the rent had been earlier fixed by this court, and therefore, there is no occasion to reduce the same. Learned counsel for the Municipality has sought to justify the subsequent increase of the rent by stating that on expiry of previous period it was

increased by further 15% as per the normal procedure and the petitioner cannot have any grievance.

11. As already indicated in the earlier litigations rent had been fixed by this Court at Rs.3019/-, taking into account the various factors including the fact that the highest bid in the auction was Rs.262 5/-. Therefore, the submission of the learned counsel for the petitioner that rent should have been further reduce after the lease period was over is not justified. However, since the matter had continued under litigation for a long period and the petitioner had reoccupied the shop for a short duration, subsequent increase in the rent by the Municipality to Rs.3472/- appears to be inequitable, and in my opinion, the petitioner should have been permitted to continue atleast for a further term at the same rent of Rs.3019/- and the question of further enhancement should have been considered after a further period of 3 years. I am inclined to take such a view particularly in view of the fact that in respect of other shops the amounts collected by the Municipality were much lower and the rent of Rs.3019/- was several times higher than the rent payable in respect of comparable shops in the locality. Subsequently, as per the order of this Court in Sub Appln.No.157 of 2003 dated 30.4.2003, on the basis of the offer made by the counsel for the petitioner in court, the petitioner has been permitted to continue to occupy the shop on payment of Rs.9000/- per month. Since the petitioner has agreed to pay such amount for the current period, even in the matter of fixation of security or payment of advance rent, a more lenient view should have been taken by the Municipality. At any rate, without seeking further clarification from the Court, the Municipality should not have refused to give possession on the ground that security deposit and other amounts have not been deposited by the petitioner.

12. Having regard to all these aspects and considering the equities and the legitimate expectation of the petitioner, I am inclined to dispose of the writ petition with the following directions :-

(1) The petitioner shall pay arrear rent at the rate of Rs.3019/- from the date of default till 25.2.2003, when the petitioner was dispossessed.
(2) A sum of Rs.20,000/- already deposited in this court and a further sum of Rs.20,000/- which was deposited in the Civil Court by the petitioner shall be adjusted towards such arrear and the balance arrear amount shall be cleared by the petitioner in six monthly instalments, the first instalment being payable on 20.8.2003 and the other instalments being payable on 20th of every succeeding month.

(3) Solvency Certificate to the value of Rs.2 lakhs with a certificate of encumbrance as contemplated in condition No.1 of the letter dated 12.5.2003 should be furnished by the petitioner by 31.7.2003.

(4) Deposit of Rs.30,000/- towards security deposit and a further deposit of Rs.27,000/- for three months, which shall be kept in the Municipality, to be adjusted towards rent payable at the end of the tenancy should be made on or before 31.7.2003.

(5) On compliance of the aforesaid conditions regarding furnishing solvency certificate and making deposit of Rs.57,000/-, the possession of the shop shall be re-delivered on 1.8.2003.

(6) The lease shall continue till 31.3.2006 and the question of renewal shall be considered in accordance with law.
(7) The petitioner shall pay rent with effect from 1.8.2003 at the rate of Rs.9,000/- per month, such rent being payable on or before 20 th of every succeeding month, the first payment being made on or before 20.9.2003.

(8) On failure by the petitioner to pay the rent as fixed above and to pay arrear rent as indicated earlier for two consecutive months, steps can be taken for her eviction.

13. Subject to the aforesaid directions and observations, contempt petition and the writ petition are disposed of along with all the miscellaneous matters. There is no order as to costs.

Index : Yes
Internet : Yes
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To

Mannargudi Municipality,
Rep. by its Commissioner,
Mannargudi,
Tiruvarur District.